

Introduced by Senator Murray

February 22, 2002

An act to amend Section 650.02 of the Business and Professions Code, and to amend Section 139.31 of the Labor Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1907, as introduced, Murray. Healing arts: referrals.

Existing law provides that it is a misdemeanor for a healing arts licensee, including physicians and surgeons, psychologists, acupuncturists, optometrists, dentists, podiatrists, and chiropractic practitioners, to refer a person for certain health care services if the licensee has a financial interest, as defined, with the person, or entity that receives the referral. Existing law provides specified exemptions from this prohibition.

This bill would exempt from the prohibition a personal services arrangement between a licensee and the recipient of the referral, if the arrangement is set out in writing, the arrangement specifies all services to be provided by the licensee, the term of the arrangement is for at least one year, and the compensation to be paid over the term of the arrangement, is set in advance, does not exceed fair market value, and is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.



The people of the State of California do enact as follows:

SECTION 1. Section 650.02 of the Business and Professions Code is amended to read:

650.02. The prohibition of Section 650.01 shall not apply to or restrict any of the following:

(a) A licensee may refer a patient for a good or service otherwise prohibited by subdivision (a) of Section 650.01 if the licensee's regular practice is located where there is no alternative provider of the service within either 25 miles or 40 minutes traveling time, via the shortest route on a paved road. If an alternative provider commences furnishing the good or service for which a patient was referred pursuant to this subdivision, the licensee shall cease referrals under this subdivision within six months of the time at which the licensee knew or should have known that the alternative provider is furnishing the good or service. A licensee who refers to or seeks consultation from an organization in which the licensee has a financial interest under this subdivision shall disclose this interest to the patient or the patient's parents or legal guardian in writing at the time of referral.

(b) A licensee, when the licensee or his or her immediate family has one or more of the following arrangements with another licensee, a person, or an entity, is not prohibited from referring a patient to the licensee, person, or entity because of the arrangement:

(1) A loan between a licensee and the recipient of the referral, if the loan has commercially reasonable terms, bears interest at the prime rate or a higher rate that does not constitute usury, is adequately secured, and the loan terms are not affected by either party's referral of any person or the volume of services provided by either party.

(2) A lease of space or equipment between a licensee and the recipient of the referral, if the lease is written, has commercially reasonable terms, has a fixed periodic rent payment, has a term of one year or more, and the lease payments are not affected by either party's referral of any person or the volume of services provided by either party.

(3) Ownership of corporate investment securities, including shares, bonds, or other debt instruments that may be purchased on terms generally available to the public and that are traded on a

1 licensed securities exchange or NASDAQ, do not base profit
2 distributions or other transfers of value on the licensee's referral
3 of persons to the corporation, do not have a separate class or
4 accounting for any persons or for any licensees who may refer
5 persons to the corporation, and are in a corporation that had, at the
6 end of the corporation's most recent fiscal year, or on average
7 during the previous three fiscal years, stockholder equity
8 exceeding seventy-five million dollars (\$75,000,000).

9 (4) Ownership of shares in a regulated investment company as
10 defined in Section 851(a) of the federal Internal Revenue Code, if
11 the company had, at the end of the company's most recent fiscal
12 year, or on average during the previous three fiscal years, total
13 assets exceeding seventy-five million dollars (\$75,000,000).

14 (5) A one-time sale or transfer of a practice or property or other
15 financial interest between a licensee and the recipient of the
16 referral if the sale or transfer is for commercially reasonable terms
17 and the consideration is not affected by either party's referral of
18 any person or the volume of services provided by either party.

19 (6) *A personal services arrangement between a licensee and*
20 *the recipient of the referral if the arrangement meets all of the*
21 *following requirements:*

22 (A) *It is set out in writing.*

23 (B) *It specifies all of the services to be provided by the licensee.*

24 (C) *The term of the arrangement is for at least one year.*

25 (D) *The compensation to be paid over the term of the*
26 *arrangement is set in advance, does not exceed fair market value,*
27 *and is not determined in a manner that takes into account the*
28 *volume or value of any referrals or other business generated*
29 *between the parties.*

30 (c) (1) A licensee may refer a person to a health facility, as
31 defined in Section 1250 of the Health and Safety Code, or to any
32 facility owned or leased by a health facility, if the recipient of the
33 referral does not compensate the licensee for the patient referral,
34 and any equipment lease arrangement between the licensee and the
35 referral recipient complies with the requirements of paragraph (2)
36 of subdivision (b).

37 (2) Nothing shall preclude this subdivision from applying to a
38 licensee solely because the licensee has an ownership or leasehold
39 interest in an entire health facility or an entity that owns or leases
40 an entire health facility.

1 (3) A licensee may refer a person to a health facility for any
2 service classified as an emergency under subdivision (a) or (b) of
3 Section 1317.1 of the Health and Safety Code.

4 (4) A licensee may refer a person to any organization that owns
5 or leases a health facility licensed pursuant to subdivision (a), (b),
6 or (f) of Section 1250 of the Health and Safety Code if the licensee
7 is not compensated for the patient referral, the licensee does not
8 receive any payment from the recipient of the referral that is based
9 or determined on the number or value of any patient referrals, and
10 any equipment lease arrangement between the licensee and the
11 referral recipient complies with the requirements of paragraph (2)
12 of subdivision (b). For purposes of this paragraph, the ownership
13 may be through stock or membership, and may be represented by
14 a parent holding company that solely owns or controls both the
15 health facility organization and the affiliated organization.

16 (d) A licensee may refer a person to a nonprofit corporation that
17 provides physician services pursuant to subdivision (l) of Section
18 1206 of the Health and Safety Code if the nonprofit corporation is
19 controlled through membership by one or more health facilities or
20 health facility systems and the amount of compensation or other
21 transfer of funds from the health facility or nonprofit corporation
22 to the licensee is fixed annually, except for adjustments caused by
23 physicians joining or leaving the groups during the year, and is not
24 based on the number of persons utilizing goods or services
25 specified in Section 650.01.

26 (e) A licensee compensated or employed by a university may
27 refer a person for a physician service, to any facility owned or
28 operated by the university, or to another licensee employed by the
29 university, provided that the facility or university does not
30 compensate the referring licensee for the patient referral. In the
31 case of a facility that is totally or partially owned by an entity other
32 than the university, but that is staffed by university physicians,
33 those physicians may not refer patients to the facility if the facility
34 compensates the referring physicians for those referrals.

35 (f) The prohibition of Section 650.01 shall not apply to any
36 service for a specific patient that is performed within, or goods that
37 are supplied by, a licensee's office, or the office of a group practice.
38 Further, the provisions of Section 650.01 shall not alter, limit, or
39 expand a licensee's ability to deliver, or to direct or supervise the

1 delivery of, in-office goods or services according to the laws,
2 rules, and regulations governing his or her scope of practice.

3 (g) The prohibition of Section 650.01 shall not apply to cardiac
4 rehabilitation services provided by a licensee or by a suitably
5 trained individual under the direct or general supervision of a
6 licensee, if the services are provided to patients meeting the criteria
7 for Medicare reimbursement for the services.

8 (h) The prohibition of Section 650.01 shall not apply if a
9 licensee is in the office of a group practice and refers a person for
10 services or goods specified in Section 650.01 to a multispecialty
11 clinic, as defined in subdivision (l) of Section 1206 of the Health
12 and Safety Code.

13 (i) The prohibition of Section 650.01 shall not apply to health
14 care services provided to an enrollee of a health care service plan
15 licensed pursuant to the Knox-Keene Health Care Service Plan Act
16 of 1975 (Chapter 2.2 (commencing with Section 1340) of Division
17 2 of the Health and Safety Code).

18 (j) The prohibition of Section 650.01 shall not apply to a
19 request by a pathologist for clinical diagnostic laboratory tests and
20 pathological examination services, a request by a radiologist for
21 diagnostic radiology services, or a request by a radiation
22 oncologist for radiation therapy if those services are furnished by,
23 or under the supervision of, the pathologist, radiologist, or
24 radiation oncologist pursuant to a consultation requested by
25 another physician.

26 (k) This section shall not apply to referrals for services that are
27 described in and covered by Sections 139.3 and 139.31 of the
28 Labor Code.

29 (l) This section shall become operative on January 1, 1995.

30 SEC. 2. Section 139.31 of the Labor Code is amended to read:

31 139.31. The prohibition of Section 139.3 shall not apply to or
32 restrict any of the following:

33 (a) A physician may refer a patient for a good or service
34 otherwise prohibited by subdivision (a) of Section 139.3 if the
35 physician's regular practice is where there is no alternative
36 provider of the service within either 25 miles or 40 minutes
37 traveling time, via the shortest route on a paved road. A physician
38 who refers to, or seeks consultation from, an organization in which
39 the physician has a financial interest under this subdivision shall

1 disclose this interest to the patient or the patient's parents or legal
2 guardian in writing at the time of referral.

3 (b) A physician who has one or more of the following
4 arrangements with another physician, a person, or an entity, is not
5 prohibited from referring a patient to the physician, person, or
6 entity because of the arrangement:

7 (1) A loan between a physician and the recipient of the referral,
8 if the loan has commercially reasonable terms, bears interest at the
9 prime rate or a higher rate that does not constitute usury, is
10 adequately secured, and the loan terms are not affected by either
11 party's referral of any person or the volume of services provided
12 by either party.

13 (2) A lease of space or equipment between a physician and the
14 recipient of the referral, if the lease is written, has commercially
15 reasonable terms, has a fixed periodic rent payment, has a term of
16 one year or more, and the lease payments are not affected by either
17 party's referral of any person or the volume of services provided
18 by either party.

19 (3) A physician's ownership of corporate investment
20 securities, including shares, bonds, or other debt instruments that
21 were purchased on terms that are available to the general public
22 through a licensed securities exchange or NASDAQ, do not base
23 profit distributions or other transfers of value on the physician's
24 referral of persons to the corporation, do not have a separate class
25 or accounting for any persons or for any physicians who may refer
26 persons to the corporation, and are in a corporation that had, at the
27 end of the corporation's most recent fiscal year, total gross assets
28 exceeding one hundred million dollars (\$100,000,000).

29 (4) *A personal services arrangement between a physician and*
30 *the recipient of the referral if the arrangement meets all of the*
31 *following requirements:*

32 (A) *It is set out in writing.*

33 (B) *It specifies all of the services to be provided by the*
34 *physician.*

35 (C) *The term of the arrangement is for at least one year.*

36 (D) *The compensation to be paid over the term of the*
37 *arrangement is set in advance, does not exceed fair market value,*
38 *and is not determined in a manner that takes into account the*
39 *volume or value of any referrals or other business generated*
40 *between the parties.*

(c) (1) A physician may refer a person to a health facility as defined in Section 1250 of the Health and Safety Code, or to any facility owned or leased by a health facility, if the recipient of the referral does not compensate the physician for the patient referral, and any equipment lease arrangement between the physician and the referral recipient complies with the requirements of paragraph (2) of subdivision (b).

(2) Nothing shall preclude this subdivision from applying to a physician solely because the physician has an ownership or leasehold interest in an entire health facility or an entity that owns or leases an entire health facility.

(3) A physician may refer a person to a health facility for any service classified as an emergency under subdivision (a) or (b) of Section 1317.1 of the Health and Safety Code. For nonemergency outpatient diagnostic imaging services performed with equipment for which, when new, has a commercial retail price of four hundred thousand dollars (\$400,000) or more, the referring physician shall obtain a service preauthorization from the insurer, or self-insured employer. Any oral authorization shall be memorialized in writing within five business days.

(d) A physician compensated or employed by a university may refer a person to any facility owned or operated by the university, or for a physician service, to another physician employed by the university, provided that the facility or university does not compensate the referring physician for the patient referral. For nonemergency diagnostic imaging services performed with equipment that, when new, has a commercial retail price of four hundred thousand dollars (\$400,000) or more, the referring physician shall obtain a service preauthorization from the insurer or self-insured employer. An oral authorization shall be memorialized in writing within five business days. In the case of a facility which is totally or partially owned by an entity other than the university, but which is staffed by university physicians, ~~such~~ *those* physicians may not refer patients to the facility if the facility compensates the referring physician for ~~such~~ *those* referrals.

(e) The prohibition of Section 139.3 shall not apply to any service for a specific patient that is performed within, or goods that are supplied by, a physician's office, or the office of a group practice. Further, the provisions of Section 139.3 shall not alter, limit, or expand a physician's ability to deliver, or to direct or

1 supervise the delivery of, in-office goods or services according to
2 the laws, rules, and regulations governing his or her scope of
3 practice. With respect to diagnostic imaging services performed
4 with equipment that, when new, had a commercial retail price of
5 four hundred thousand dollars (\$400,000) or more, or for physical
6 therapy services, or for psychometric testing which exceeds the
7 routine screening battery protocols, with a time limit of two to five
8 hours, established by the Industrial Medical Council, the referring
9 physician obtains a service preauthorization from the insurer or
10 self-insured employer. Any oral authorization shall be
11 memorialized in writing within five business days.

12 (f) The prohibition of Section 139.3 shall not apply where the
13 physician is in a group practice as defined in Section 139.3 and
14 refers a person for services specified in Section 139.3 to a
15 multispecialty clinic, as defined in subdivision (l) of Section 1206
16 of the Health and Safety Code. For diagnostic imaging services
17 performed with equipment that, when new, had a commercial
18 retail price of four hundred thousand dollars (\$400,000) or more,
19 or physical therapy services, or psychometric testing which
20 exceeds the routine screening battery protocols, with a time limit
21 of two to five hours, established by the Industrial Medical Council,
22 performed at the multispecialty facility, the referring physician
23 shall obtain a service preauthorization from the insurer or
24 self-insured employer. Any oral authorization shall be
25 memorialized in writing within five business days.

26 (g) The requirement for preauthorization in sections (c), (e),
27 and (f) shall not apply to a patient for ~~which~~ whom the physician
28 or group accepts payment on a capitated risk basis.

29 (h) The prohibition of Section 139.3 shall not apply to any
30 facility when used to provide health care services to an enrollee of
31 a health care service plan licensed pursuant to the Knox-Keene
32 Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing
33 with Section 1340) of Division 2 of the Health and Safety Code).

